



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

December 29, 2015

Ms. Debra Fryzel  
10385 Red Oak Drive  
St. John, Indiana 46373

*Re: Formal Complaint 15-FC-303; Alleged Violation of the Access to Public Records Act by the Town of St. John Clerk-Treasurer's Office*

Dear Ms. Fryzel,

This advisory opinion is in response to your formal complaint alleging the Town of St. John Clerk-Treasurer's Office ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Office responded via Counsel, Mr. Jeffrey Gunning, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 12, 2015.

## **BACKGROUND**

Your complaint dated November 12, 2015 alleges the Town of St. John Clerk-Treasurer's Office violated the Access to Public Records Act by not providing you with records you requested.

On October 21, 2015 you requested a copy "any and all checks received by the Town of St. John (Clerks Office) for any scrap including Splash Pad + any Park equipment in the years of 2014 + 2015."

On October 22, 2015 Ms. Sury informed you she could not find three (3) receipts and that she does not have copies of checks. Ms. Sury contacted you the next day regarding a separate public access request. You told her you would "wait until all records from my request from 10-21-15 were ready."

On November 6, 2015 you requested job descriptions of employees of the Clerk-Treasurer's Office. You have received no further communications regarding these requests.



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On December 2, 2015 counsel for the Clerk-Treasurer responded. Counsel contends you were not denied access to the checks and receipts. He notes the Office has prepared what documents it possesses. Counsel also contends you were informed the Office does not possess all the documents you requested related to the October 21, 2015 request.

With regard to the November 6, 2015 request, counsel states this request was acknowledged on November 10, 2015 and was fulfilled on November 17, 2015. You merely have to retrieve the documents from the Office.

## ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Town of St. John Clerk-Treasurer’s Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(c).

After acknowledgement of a request is made, a public agency has a reasonable time to actually produce the documents requested. See Ind. Code § 5-14-3-3. A reasonable time is a subjective standard measured on a case-by-case basis. Indeed it appears as if some of the documents you requested would take less time than others to produce. While “reasonable” does not equate to “immediate” -production of documents should happen efficiently and without significant delay.



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As you acknowledge in your complaint, you were informed the Office does not possess the checks and receipts you requested. The APRA does not require a public agency to provide documents it does not possess. Because you were informed the Office does not possess the records, the Office's actions were proper.

With regard to your second request, you filed your complaint a mere two (2) days after your request to the Office was acknowledged. The Office fulfilled this request within seven (7) days. This is a reasonable time as contemplated by statute.

## CONCLUSION

Based on the foregoing, it is the determination of the Office of the Public Access Counselor the Town of St. John Clerk-Treasurer's Office did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.

**Luke H. Britt**  
Public Access Counselor

Cc: Mr. Jeffrey Gunning, Esq.